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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,372	12/24/2001	Jean Marc Paulin	3882/12	8034
29858	7590	06/02/2005	EXAMINER	
BROWN, RAYSMAN, MILLSTEIN, FELDER & STEINER LLP 900 THIRD AVENUE NEW YORK, NY 10022			ORTIZ, BELIX M	
			ART UNIT	PAPER NUMBER
			2164	

DATE MAILED: 06/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/026,372

Applicant(s)

PAULIN, JEAN MARC

Examiner

Belix M. Ortiz

Art Unit

2164

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


SAM RIMELL
PRIMARY EXAMINER

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/8/2004</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Remarks

1. In response to communications files on September 20, 2004, the specification of the disclosure, claims 1-6 and 8-10 are amended per applicant's request. Therefore, claims 1-6 and 8-10 are presently pending in the application.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Reps et al. (U.S. patent 6,070,190).

As to claim 1, Reps et al. teaches a method for determining a level of service for a server hosting an information resource, (see figures 1 and 2; column 2, lines 25-31; column 2, lines 49-54 and column 4, lines 12-15) the method comprising:

at a first computer;

retrieving an information resource from the internet (see column 9, lines 1-13 and column 25, lines 13-19);

capturing service level thresholds and the time required to retrieve the information resource (see column 2, lines 25-37 and column 6, lines 6-10);

recording the service level thresholds and parameters regarding the information resource in a transaction data file (see column 2, lines 64-67; column 3, lines 1-8 and column 5, lines 46-54); and

forwarding the transaction data file from the first computer, through a network, to a second computer (see column 6, lines 15-23);

at the second computer;

identifying a first step in the transaction data file (see column 23, lines 27-31);

executing the first step by attempting to retrieve the information resource identified by the first step (see column 23, lines 31-35); and

determining a level of service for a server hosting the information resource based on the executing (see figures 1 and 2; column 2, lines 25-31; column 2, lines 49-54; column 4, lines 12-15; and column 23, lines 35-39).

As to claim 2, Reps et al. teaches the method further comprising aborting the step of retrieving when a timeout threshold is exceeded (see column 5, lines 31-37).

As to claim 3, Reps et al. teaches wherein the parameters comprise an address and port of the information resource (see column 5, lines 46-54).

As to claim 4, Reps et al. teaches the method further comprising generating at the first computer conditional logic used to instruct service software at the second computer as to a service level code to return based on the service software's time to retrieve the

information resource (see figures 1 and 2; column 12, lines 66-67; column 13, lines 1-9; and column 16, lines 7-11).

As to claim 5, Reps et al. teaches wherein the generating conditional logic comprises generating conditional logic defining service levels of GOOD, MARGINAL, and FAILED (see column 2, lines 28-34; column 3, lines 39-42; and column 4, lines 5-14).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reps et al. (U.S. patent 6,070,190) in view of Dean et al. (U.S. patent 6,442,585).

As to claim 6, Reps et al. does not teach wherein recording comprises recording the step information in a hierarchy, each step comprising an entry in the hierarchy with the data in the transaction data file being a top level of the hierarchy.

Dean et al. teaches method for scheduling contexts based on statistics of memory system interactions on a computer (see abstract), in which he teaches wherein recording comprises recording the step information in a hierarchy, each step comprising an entry in

the hierarchy with the data in the transaction data file being a top level of the hierarchy (see column 2, lines 66-67; column 3, lines 1-3; and column 5, lines 42-46).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Reps et al., to include wherein recording comprises recording the step information in a hierarchy, each step comprising an entry in the hierarchy with the data in the transaction data file being a top level of the hierarchy.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Reps et al. by the teaching of Dean et al., because wherein recording comprises recording the step information in a hierarchy, each step comprising an entry in the hierarchy with the data in the transaction data file being a top level of the hierarchy, would enable the method to facilitate the recording of a user's navigation steps within a transaction and playback of those steps in the order they are stored (hierarchy order).

6. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reps et al. (U.S. patent 6,070,190) in view of Marullo et al. (U.S. patent 6,044,398).

As to claim 8, Reps et al. does not teach the method further comprising, at the second computer:

identifying one or more subsequent steps in the transaction data file;

executing the one or more subsequent steps by attempting to retrieve information resources identified by the subsequent one or more steps; and

returning respective levels of service for respective servers hosting the respective information resources identified in the one or more steps.

Marullo et al. teaches virtual dynamic browsing system and method for automated web server and testing (see abstract), in which he teaches the method further comprising, at the second computer:

identifying one or more subsequent steps in the transaction data file (see column 30, lines 54-57);

executing the one or more subsequent steps by attempting to retrieve information resources identified by the subsequent one or more steps (see column 3, lines 10-12); and

returning respective levels of service for respective servers hosting the respective information resources identified in the one or more steps (see column 6, lines 30-37).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Reps et al., to include the method further comprising, at the second computer:

identifying one or more subsequent steps in the transaction data file;

executing the one or more subsequent steps by attempting to retrieve information resources identified by the subsequent one or more steps; and

returning respective levels of service for respective servers hosting the respective information resources identified in the one or more steps.

It would have been obvious to a person having ordinary skill in the

art at the time the invention was made to have modified Reps et al. by the teaching of Marullo et al., because the method further comprising, at the second computer:

identifying one or more subsequent steps in the transaction data file;
executing the one or more subsequent steps by attempting to retrieve information resources identified by the subsequent one or more steps; and
returning respective levels of service for respective server's hosting the respective information resources identified in the one or more steps, would enable the method to retrieve the next step the transaction needs to perform, to finish with the transaction of the user and depending on the execution of the transaction is the level of service.

As to claim 9, Reps et al. as modified teaches the method further comprising calculating an amount of time to execute the first step (see Reps et al., column 2, lines 25-37 and column 6, lines 6-10).

As to claim 10, Reps et al. as modified teaches wherein the step of determining the level of service comprises determining the level of service based on the amount of time required to execute the first step (see Reps et al., column 17, lines 6-17).

Response to Arguments

7. Applicant's arguments filed 20-September-2004 with respect to the rejected claims in view of the cited references have been fully considered but they are not found persuasive:

In response to applicants' arguments that Reps "does not show recording the service level thresholds in a transaction data file,

forwarding the transaction data file to a second computer; and then executing a step in the transaction data file at the second computer to determining a level of service for a server", the arguments have been fully considered but are not deemed persuasive, because Reps et al. teaches "teaches a microcomputer-based monitoring system for concurrently monitoring a plurality of host applications running on a mainframe computer, for summarizing the monitored information and for graphically displaying the information on the display screen of a microcomputer system as well as to provide an alarm mechanism for indicating the attainment of user-defined thresholds. The Multiple System Application Monitor (MSAM) taught by Estes receives existing summarized information from the host machine and reduces the information to an accurate picture of the applications running on the host", (see Reps et al., column 2, lines 64-67 and column 3, lines 1-8).

"In accordance with a related aspect of the invention, a central repository is provided for receiving the generated transaction records from any of the probes implemented at any of the client computers in the computer network", (see Reps et al., column 6, lines 15-23).

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Belix M. Ortiz whose telephone number is 571-272-4081. The examiner can normally be reached on moday-friday 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dov Popovici can be reached on 571-272-4083. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

bmo

May 19, 2005



SAM RIMELL
PRIMARY EXAMINER